

### **REMARKS**

The Office Action mailed October 9, 2002 has been received and the Examiner's comments carefully reviewed. Claim 19 has been amended. Applicants have included herewith a document entitled, "VERSION WITH MARKINGS TO SHOW CHANGES MADE" to indicate how claim 19 has been amended. No new subject matter has been added. Claims 1-22 are currently pending. For at least the following reasons, Applicants respectfully submit that the pending claims are in condition for allowance.

Claims 14 and 18 have been withdrawn from consideration. Applicants wish to maintain the pendency of claim 14 and 18 in the event a generic claim is allowed.

### **EXAMINER INTERVIEW**

Applicants' below signed representative conducted a telephone interview with Examiner Harris on December 23, 2002. The interview was directed toward the combination of the Dower reference and the Willingham reference. The Examiner indicated that she would further consider Applicants' comments upon receipt and review of Applicants' formal response. The Examiner is thanked for her time.

### **Rejections Under 35 U.S.C. §103**

The Examiner rejected claims 1-5, 7, 10, 15-17, 19, 21, and 22 under 35 U.S.C. §103(a) as being patentable over Dower (U.S. Patent 5,112,103) in view of Willingham (U.S. Patent 5,887,951). Applicants respectfully traverse this rejection. Claim 19 has been amended for clarification. Claims 1, 7, 15, and 19 are the only independent claims of this group.

#### **I. Cited Prior Art**

The Downer reference teaches a stool having a saucer-shaped seat 1 mounted to one end of a vertical column 2. The bottom of the column 2 rests on a rounded base 4, which is shaped like a bowl. Columns 1 and 2, lines 53-54 and 16-19. Because the base

4 is shaped like a bowl, the base permits the stool to rock in any direction, forwards or backwards. Column 2, lines 26-27.

The Willingham reference teaches a seat 10. The seat has a first non-weight bearing shape and a desired, secondary weight bearing shape. See FIG. 4a-4c; also column 8, lines 40-58. As shown in FIG. 4b, when a person is seated, the front, lip-like portion of the seat deforms downward (i.e. undertakes a substantially downward curvature, column 8, lines 51-52). In this secondary weight bearing configuration, the seat tilts forward until the front portion comes into direct contact with the surface upon which the seat rests. Column 4, lines 20-26; column 7, lines 45-60.

II. Claims 1-5, 7, 10, 19, 21, and 22:

Independent claims 1, 7, and 19 recite a stool including a base, a seat, and a post connecting the base and seat. The base is characterized as elongated from the back to the front along a longitudinal axis.

Dower does not teach or suggest a stool having a base that is elongated from the back to the front. The base is Dower, rather, is round and bowl or saucer shaped.

The Examiner has rejected claims 1, 7, and 19 by combining Dower and Willingham. In particular, the Examiner has combined the seat and post of Dower with the seat of Willingham, asserting that the seat of Willingham teaches the recited limitations of a base having an elongated shape. Applicants respectfully submit that a prima facie case of obviousness is not supported.

First, Willingham teaches a seat. There is no suggestion or teaching in either reference to combine the seat of Willingham with the seat and post in Dower. Applicants ask that the Examiner reconsider the basis for this combination, as in claims 1, 7 and 19, it is the shape of the base that is recited as being elongated, not the seat.

Second, there is also no teaching or suggestion in either reference to combine the seat of Willingham, used as a base, with the seat and post in Dower. Notably, modifying the Dower seat and post to include Willingham's seat as a base would create an inoperable combination. Each reference teaches away from such a combination.

Specifically, Dower teaches a round base, shaped like a bowl, that permits a user to rock or tilt the base in any direction. Columns 1 and 2, lines 52-53 and 26-27. In contrast, Willingham teaches a seat specially made of a flexible material so that the seat assumes a particular weight-supporting configuration when a user is seated in the seat. Column 4, lines 8 and 15. In the weight-supporting configuration (i.e. a user is seated in the seat) the seat assumed a distinct angle relative to horizontal and the front lip portion undertakes a "substantial downward curvature under the weight of the user's upper leg portions." Column 8, line 47-52. As shown in FIG. 4b, when a person is seated in the seat, the front lip portion substantially curves downward and "comes into direct contact with the parent surface." Column 7, lines 56-59. Thus, a person seated in the suggested combination (a Dower seat and Willingham base) would not be permitted to rock in any direction.

The Dower reference is configured to provide rocking movement in any direction when a user is seated. In contrast, the downward curved lip of the Willingham device prevents such movement and would render the Dower invention inoperable if combined with the Dower seat. Accordingly, Applicants respectfully submit that neither reference suggests or provides motivation to modify the other, and that a prima facie case of obviousness is not supported.

Applicants therefore submit that each of claims 1, 7, and 19, reciting a base elongated from the back to the front, is patentable. Claims 2-5 depend upon claim 1. Claim 10 depends upon claim 7. Claims 21 and 22 depend upon claim 19. Claims 2-5, 10, 21, and 22 are therefore also patentable.

### III. Claims 15-17:

Independent claim 15 recites a method of gardening including providing a stool having a seat and a base with a flattened region that stabilizes the user when seated in the seat. The method also recites rolling the seat forward and tilting toward the sides while leaning forward.

Downer does not teach or suggest a base having a flattened region that stabilizes the user when seated in the seat. Rather, Downer teaches adding spheres 6 to the round base to stabilize the stool on hard surfaces.

Where Dower fails to teach or suggest the limitations of claim 15, Willingham does not make up for its deficiencies. As discussed above, Applicants submit that the combination of Willingham and Dower cannot be properly established. Even so, Willingham does not teach or suggest a base of which, once the user is seated: 1) the flattened region stabilized the user in the seated upright position, yet, 2) permits the user to roll forward and tilt the stool to the side. Rather, the seat of Willingham deforms to a specific, non-maneuverable shape, once the user is seated.

Applicants respectfully submit that claim 15 is patentable. Claims 16 and 17 depend upon claim 15 and are therefore also patentable.

The Examiner rejected claim 6 under 35 U.S.C. §103(a) as being patentable over Dower in view of Willingham and Ferguson (U.S. Patent 6,062,638). Claims 8, 9, and 20 are rejected under 35 U.S.C. §103(a) as being patentable over Dower in view of Willingham and Pagano et al. (U.S. Patent 5,337,427). Claims 11 and 12 are rejected under 35 U.S.C. §103(a) as being patentable over Dower in view of Willingham and Sherman et al. (U.S. Patent 5,891,546). Claim 13 is rejected under 35 U.S.C. §103(a) as being patentable over Dower in view of Willingham and Mathews (U.S. Patent 4,099,771). Applicants respectfully traverse these rejections.

IV. Claims 6, 8, 9, 11-13, and 20

Claim 6 depends upon claim 1. Claims 8, 9, and 11-13 depend upon claim 7. Claim 20 depends upon claim 19. In view of the remarks regarding independent claims 1, 7 and 19, further discussion regarding the independent patentability of dependent claims 6, 8, 9, 11-13, and 20 is believed to be unnecessary. Applicants submit that dependent claims 6, 8, 9, 11-13, and 20 are in condition for allowance.

**SUMMARY**


It is respectfully submitted that each of the presently pending claims is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P. O. Box 2903  
Minneapolis, Minnesota 55402-0903  
612.332.5300

Date Dec. 26, 2002

  
\_\_\_\_\_  
Karen A. Fitzsimmons  
Reg. No. 50,470  
KAF:PSTtdm

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**In the Claims**

Claim 19 has been amended as follows:

19. (Once Amended) A stool, comprising:

(a) a seat;

(b) a base having a front end and a back end, said base being elongated from the front end to the back end and defining a longitudinal axis;

(c) a post connecting said seat to said base;

(d) a stabilization structure positioned rearward of the post;

said base including a first contour located forward of said post, said first contour having a first convex curvature in a direction transverse to the longitudinal axis for allowing side to side pivoting;

said base including a second contour extending a direction along the longitudinal axis for allowing front to back pivoting;

said stabilization region configured to stabilize said stool by limiting side to side pivoting when said stool is upright without interfering with forward [front to back] pivoting, and without limiting side to side pivoting when said stool is pivoted forward [forwardly].